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LEE TIN HUI v. GL PROPERTY MANAGEMENT SDN BHD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
ATAN MUSTAFFA YUSSOF AHMAD J
[ORIGINATING SUMMONS NO: WA-24NCC-339-07-2024]
10 MARCH 2025

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Abstract – *(i) The proper action to commence against directors who had taken unauthorised loans and unjustified excessive remuneration in disregard of interests of a company and its minority shareholders, is the oppressive action under s. 346 of the Companies Act 2016 ('CA 2016') and not the derivative proceedings under s. 347 of the same Act; (ii) Although exempt private companies are exempted from the operation of s. 224(1) of the CA 2016 regarding the absolute prohibition on directors' loan, they remain bound by the approval and repayment requirements under s. 224(4) and (5) of the CA 2016; (iii) Upon the death of a shareholder, his shareholding, including his right to receive dividends, would pass to his estate, which will eventually flow to his beneficiary. As such, the beneficiary does have the standing to question any non-declaration of dividends during the period between after the death of the shareholder and before the beneficiary becomes a registered shareholder; (iv) A beneficial shareholder has the right to receive notice of meetings and to be informed of material developments of a company's affairs.*

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COMPANY LAW: *Oppression – Conduct amounting to oppression – Directors of company took out personal loans and excessive remuneration without shareholder approval – Deteriorating financial position of company – Directors did not declare dividends while knowing minority shareholders could only benefit through such – Directors failed to convene meetings and inform minority shareholders of financial affairs of company – Whether actions of company amounted to oppression – Whether correct to commence oppression action under s. 346 of Companies Act 2016 instead of derivative proceedings under s. 347 of same Act*

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COMPANY LAW: *Directors – Remuneration – Directors of company took out remuneration without shareholder approval – Deteriorating financial position of company – Whether remuneration excessive and justified – Whether directors vested with authority to decide on matter regarding their own remuneration – Whether post-facto ratifications of remuneration amounted to oppression to minority shareholders*

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COMPANY LAW: *Members' rights – Locus standi – Company did not declare dividends for several years after appointment of new directors – Non-declaration of dividends took place before beneficial shareholder became registered shareholder of company – Whether beneficial shareholder entitled to question on non-declaration of dividends*

COMPANY LAW: *Meetings – Calling of meetings – Whether directors had duty to inform shareholders of material development of affairs of company – Whether beneficial shareholder had right to receive notice of meetings*

STATUTORY INTERPRETATION: *Interpretation of Acts – Intention of Legislature – Companies Act 2016, s. 224 – Whether authorities pertaining to s. 133 of Companies Act 1965 applicable to interpretation of s. 224 – Whether exempt private companies excluded from operation of sub-s. 224(1) – Whether exempt private companies bound by sub-ss. 224(4) & 5*

The first defendant was a company that derived its income from renting out a property. The second defendant was the majority shareholder and, together with the third defendant, his spouse, were the directors of the first defendant. The plaintiff was one of the minor shareholders of the first defendant, who was registered in 2022. Pursuant to the death of the plaintiff's father, who was the former director of the first defendant, the second and third defendants were appointed as the directors of the first defendant, respectively, in 2017 and 2018. Between 2018 and 2021, the second and third defendants had withdrawn various sums as loans from the first defendant totalling RM925,101. The loans were interest-free and repayable on demand. They also began drawing remuneration from 2019, starting at RM30,000, increasing to RM60,000 in 2020, and then to RM180,000 in 2021, 2022 and 2023. Other than that, in 2023, the first defendant had declared interim dividends of RM50,000 for the financial year ending 31 December 2023. As of the said date, the first defendant had retained earnings of approximately RM1.2 million but recorded an operating loss of RM62,806. According to the plaintiff, the second and third defendants, by their actions, had oppressed and disregarded the interests of the minority shareholders like herself. For this reason, the plaintiff, *via* an originating summons ('OS'), commenced the present oppression action under s. 346 of the Companies Act 2016 ('CA 2016') against the defendants. The grounds for the OS were: (i) the personal loans were taken without a proper shareholder approval and the same had not been paid within the period as stipulated under s. 224 of the CA 2016; (ii) the second and third defendants had paid themselves excessive remuneration without proper approval; (iii) the first defendant failed to declare dividends despite making profits for financial years 2017 to 2020; and (iv) the second and third defendants failed to circulate notices of meeting and resolutions to enable shareholders to review the deteriorating financial situation and management of the first defendant. The issues that arose in the OS were: (i) whether the plaintiff should have commenced an action for

corporate wrongs under s. 347 of the CA 2016 instead of the present oppressive action; (ii) whether s. 224 of the CA 2016 was applicable to directors' loan in exempt private companies; (iii) whether the directors' remuneration were excessive and unjustified; (iv) whether the 2023 dividends' declaration was improper and the plaintiff had the standing to complain about the non-declarations of dividends by the first defendant in 2017 to 2020 because she only became a registered shareholder in 2022; and (v) whether the second and third defendants had the obligation to hold meetings and provide information to shareholders.

Held (allowing OS):

(1a) Applying the five-key criteria as mentioned in *Low Cheng Teik & Ors v. Low Ean Nee* ('*Low Cheng Teik*'), it revealed a clear pattern of conduct by the second and third defendants that went beyond mere corporate mismanagement. Upon assuming control of the first defendant, the directors had immediately taken up personal loans, and paying themselves increasing remunerations, despite the first defendant's revenue had remained relatively constant at approximately RM317,000 per annum. The second and third defendants' conscious decision to extract value by not declaring dividends, had specifically targeted minority shareholders who could only benefit through dividend declarations. (paras 27, 28 & 30)

(1b) The present situation was precisely recognised by *Low Cheng Teik* in para. 97, where the majority shareholders had structured the extraction of company in a way to benefit themselves while excluding the minority shareholders. Herein, the conduct by the directors had revealed a pattern where they were self-enriched, while the minority shareholders were disadvantaged; such conduct fell within s. 346 of the CA 2016. This conclusion aligned with the requirement mentioned in para. 97 of the said case. The distinctive impact was established through the majority shareholders' conscious choice of profit extraction mechanisms that excluded minority shareholders' participation. Hence, the plaintiff's complaints had properly constituted an oppression under s. 346 of the CA 2016. (paras 32-35)

(2a) The authorities relied on by the defendants were misplaced as they pertained to the interpretation of s. 133 of the Companies Act 1965 ('CA 1965'). In contrast to s. 133 of the CA 1965, s. 224 of the CA 2016 adopted a different legislative scheme. Section 224(4)(b) specifically contemplated private companies making loans to directors and provided a six-month window for obtaining approval. If exempt private companies were entirely outside the scope of s. 224, this provision would be redundant, and the Legislature would not have specified different approval timelines for public versus private

companies. This was reinforced by s. 224(5)(b) of the CA 2016 which established a 12-month repayment requirement for private companies where approval was not obtained. The detailed governance requirements for private companies, which did not exist in the CA 1965, demonstrated Parliament's intent that exempt private companies, while relieved from the absolute prohibitions on loans, would remain subject to approval and repayment requirements. (paras 38-39, 41, 43 & 44)

(2b) The interpretation advanced by the defendants, that since the first defendant was an exempt private company, they were entirely excluded from the operation of s. 224, would effectively render nugatory the specific governance requirements Parliament introduced in the CA 2016. It would create an unintended *lacuna* where directors of exempt private companies could make unlimited loans to themselves without any procedural safeguards, despite such safeguards had been included in s. 224(4) and (5). The changed legislative intent was illustrated by s. 133A of the CA 1965. Consequently, although the first defendant was relieved from the absolute prohibition on directors' loan under s. 224(1), it remained bound by the approval and repayment requirements under s. 224(4) and (5), which it failed to satisfy. (paras 46-47 & 49)

(3a) The dramatic escalation in remuneration could not be justified by the nature of the first defendant's business or the directors' responsibilities. The defendants' attempt to justify this by reference to tenant issues and property maintenance was undermined by both the first defendant's historical operation and the legal principles established in *Wong See Yaw & Anor v. Bright Packaging Industry Bhd* ('*Wong See Yaw*'). Therein, the court had specifically rejected arguments about increased responsibilities. Prior to the second and third defendants' appointments, the first defendant was successfully managed by previous directors who did not draw any remuneration. The additional responsibilities cited by the defendants, such as dealing with investigations and legal proceedings by the Companies Commission of Malaysia, were largely caused by the second and third defendants' own conduct of taking substantial loans and excessive remunerations. (paras 52 & 55)

(3b) In *Wong See Yaw*, it was held that directors were not vested with authority to decide on matters regarding their own remuneration. According to art. 87 of the first defendant's articles of association ('articles'), remuneration must be determined by the first defendant during a general meeting. However, in the instant case, no determination was ever made before the payments were taken. Moreover, the timing and circumstances of the resolutions suggested

that they were reactive measures rather than proper corporate governance. The resolution dated in 2023 was an attempt to approve 2022 remuneration, while the resolution dated in 2024 sought to retroactively approve remuneration from 2019 to 2021. These *post-facto* ratifications, particularly where the benefiting directors control the majority votes, could not legitimise what was essentially an improper appropriation of company funds. The combined effect of these excessive remunerations mirrored precisely what *Re Gee Hoe Chan Trading* identified as oppressive behaviour. (paras 56-59)

(4a) Upon the death of the plaintiff's father, his rights as a shareholder, including the right to receive dividends, passed to his estate. The plaintiff's entitlement to 25% of her father's shareholding crystallised at that point pursuant to his will. Any dividends declared during the period between her father's death and her registration as a shareholder would have flowed to her through the estate's executors. This was supported by article 63(1)(b) of the articles, which acknowledged the substantive rights of beneficial owners following a testamentary succession, even before a formal registration. (paras 63-65)

(4b) There was a stark contrast in dividend policy before and after the second and third defendants' appointments as directors. Prior to 2017, the first defendant regularly declared dividends, including RM200,000 in 2014, RM500,000 in 2015 and RM200,000 in 2016. This practice ceased entirely after the second and third defendants took control, coinciding with their extraction of substantial loans and remuneration. The impropriety of the 2023 dividend was particularly telling. The second and third defendants had declared RM50,000 dividends despite the first defendant was operating at a loss, primarily to facilitate the second defendant's repayment of unauthorised loans through his RM37,500 dividends entitlement. (paras 66 & 67)

(4c) The defendants' argument regarding the retained profits of RM1.1 million was misleading. A substantial portion of these retained profits consisted of receivables, including the RM925,101 in unauthorised loans to directors. The declaration of dividends against such illusory retained profits, particularly while the first defendant was recording operating losses, was improper and could potentially subject the minority shareholders to liability for wrongly paid dividends under s. 133 of the CA 2016. For these reasons, the plaintiff possessed the standing to challenge the first defendant's dividend policy. Further, the pattern of non-declaration of dividend followed by an improper declaration in 2023, constituted part of the overall pattern of oppressive conduct by the majority shareholders. (paras 68-69)

(5a) The abolition of mandatory annual general meeting requirements under the CA 2016 did not absolve directors of their fundamental duties to keep shareholders informed of material developments in company's affairs. This is particularly true where the first defendant's financial position had deteriorated significantly under the directors' management. The defendants' assertion, when being queried by the plaintiff regarding the first defendant's financial position, that shareholders had no right under the Companies Act to inspect, among others, the first defendant's clients' management accounts, demonstrated a fundamental misunderstanding of directors' duties to shareholders and reinforced the oppressive nature of their conduct. The contention that the plaintiff could have requested meetings under s. 310 of the CA 2016 ignored the information asymmetry between directors and shareholders. Without access to financial information, the plaintiff had no basis to know when meetings were necessary. Moreover, when the plaintiff queried regarding the unauthorised loans and excessive remuneration, the plaintiff was ignored by the defendants. (paras 72-74)

(5b) By reading art. 63(1)(b) of the articles together with s. 321(2) of the CA 2016, the plaintiff was clearly entitled to receive notice of meetings following her father's death. However, the only meetings where notices were eventually provided were those seeking to ratify the directors' own remuneration. The selective convening of meetings demonstrated they were only used to serve the directors' interests rather than proper corporate governance. Such pattern of behaviour aligned with the oppressive conduct identified in *Re Gee Hoe Chan Trading*. (paras 75-77)

(6) Considering that the second and third defendants had managed the affair of the first defendant in manners oppressive to the plaintiff as a minority shareholder, the OS was allowed on the terms as enunciated in para. 79 of the judgment. (paras 78 & 79)

Case(s) referred to:

Hutton v. West Cork Railway Co [1883] 23 Ch D 65 ***(refd)***
Lee Ah Kong v. Wings Logistic Sdn Bhd & Anor [2013] CLJU 1413; [2013] 1 LNS 1413 HC ***(refd)***
Low Cheng Teik & Ors v. Low Ean Nee [2024] 9 CLJ 171 FC ***(refd)***
Re Gee Hoe Chan Trading Co Pte Ltd [1992] 1 BLJ 108 ***(refd)***
Ting Teck Sie v. Wong Sen Chiew & Ors [2001] CLJU 353; [2001] 1 LNS 353 HC ***(refd)***
Wong See Yaw & Anor v. Bright Packaging Industry Bhd [2016] 6 CLJ 465 HC ***(refd)***

Legislation referred to:

Companies Act 1965, ss. 133(1), 133A(1)
Companies Act 2016, ss. 224(1), (2)(a), (3), (4)(b), (5)(b), 321(2), 346(1), 347

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JUDGMENT

Atan Mustaffa Yussof Ahmad J:

Introduction

[1] Before the court is an oppression action under s. 346 of the Companies
B Act 2016 brought by a minority shareholder against the majority shareholder-directors of a family-owned investment holding company. At issue are allegations of oppressive conduct including substantial interest-free loans taken by directors without proper approval, payment of excessive remuneration, non-declaration of dividends, and failure to provide
C information or hold meetings – all allegedly designed to benefit the majority at the expense of minority interests. The case requires examination of the distinction between corporate wrongs and genuine oppression, the legal requirements governing directors' loans and remuneration in private companies, and the obligations directors owe to shareholders regarding
D corporate governance and transparency.

Background Facts

[2] The first defendant, GL Property Management Sdn Bhd ('the company'), was incorporated on 2 August 1984 as an investment holding company. The company owns one property located at No. 72, Ground
E Floor, 1st Floor, 2nd Floor and 3rd Floor, Jalan SS2/67, 47300 Petaling Jaya, Selangor, from which it derives rental income.

[3] Initially, the company's shares were held by Tan Gaik Lan and her sister Tan Gaik Sim, with one share each. In 1993, Tan Gaik Sim's share
F was transferred to Lee Pin Nah @ Lee Kim Nier. In 2012, following Tan Gaik Lan's death, her share was transferred to Lee Hiong Kiat, the second defendant.

[4] The directorship of the company from its incorporation until 2018 was as follows: Tan Gaik Lan (2 August 1984 - 27 July 2011), Lee Pin Nah
G (4 May 1993 - 19 October 2017), and Ronny Tan @ Tan Lip Ping (6 June 1994 - 2 February 2018).

[5] Lee Pin Nah passed away on 19 October 2017, leaving a will dated 25 June 2015. Under the will, his one share in the company was to be distributed among his children as follows:

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(i) the second defendant, Lee Hiong Kiat (50%);

(ii) the plaintiff, Lee Tin Hui (25%); and

(iii) Lee Tin Nee (25%).

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[6] Upon Lee Pin Nah's death, the second defendant was appointed as a director of the company on 19 October 2017. Subsequently, his wife, Kee Chai Hong, the third defendant, was appointed as a director on 30 January 2018, following Ronny Tan's resignation which took effect from 2 February 2018.

[7] The original executors named in Lee Pin Nah's will were Yuen King Mun and Ong Kok Bin. However, they renounced their executorships on 15 March 2018 and 27 March 2018 respectively. Subsequently, Pacific Trustees Berhad was appointed as the administrator and trustee of Lee Pin Nah's estate on 15 September 2020 pursuant to letters of administration with will annexed.

[8] On 4 May 2021, Lee Pin Nah's share in the company was transmitted to Pacific Trustees Berhad to be held in trust for the beneficiaries. The share was eventually transferred to the respective beneficiaries on 20 December 2022, at which point Lee Tin Hui became a registered shareholder of the company.

[9] Between 2018 and 2021, the directors withdrew various sums as loans from the company totalling RM925,101. The loans were interest-free and repayable on demand. The directors also began drawing remuneration from 2019, starting at RM30,000 in 2019, increasing to RM60,000 in 2020, and then to RM180,000 in 2021, 2022 and 2023.

[10] On 15 October 2021, the plaintiff filed her first oppression action (WA-24NCC-468-10-2021) against the defendants. This action was struck out on 2 March 2022 as she was not yet a registered shareholder of the company at the time.

[11] The company declared interim dividends of RM50,000 for the financial year ending 31 December 2023. As of 31 December 2023, the company had retained earnings of approximately RM1.2 million but recorded an operating loss of RM62,806 for that financial year.

[12] On 23 July 2024, the plaintiff commenced the present oppression action under s. 346 of the Companies Act 2016. The current shareholding of the company stands at:

(i) the second defendant (75%),

(ii) the plaintiff (12.5%); and

(iii) Lee Tin Nee (12.5%).

The Originating Summons

[13] The originating summons was filed by the plaintiff on 23 July 2024 pursuant to s. 346 of the Companies Act 2016. She sought a declaration that the affairs of the company were being conducted oppressively and in disregard of her interests as a minority shareholder. The prayers included

orders for: the repayment of loans taken by the directors, repayment of directors' remuneration deemed unlawful, appointment of a forensic auditor to investigate the company's operations and accounts, appointment of an independent valuer to value the company's property, appointment of an independent accountant to value the company's shares, and ultimately either a buyout of her shares by the second defendant or alternatively, the winding up of the company. She also sought damages with interest at 5% per annum from the date of the originating summons until full payment.

[14] The grounds for the application were that:

(i) the directors had taken personal loans totalling RM925,101 without proper shareholder approval and failed to repay within the stipulated time period under s. 224 of the Companies Act 2016;

(ii) the directors had paid themselves excessive remuneration without proper approval, increasing from RM30,000 in 2019 to RM180,000 in 2021-2023;

(iii) the company failed to declare dividends despite making profits for financial years 2017-2020; and

(iv) the directors failed to circulate notices of meetings and resolutions to enable shareholders to review the deteriorating financial situation and management of the company.

[15] These actions were alleged to have been conducted in a manner oppressive to the plaintiff as a minority shareholder and in disregard of her interests.

Parties' Submissions

The Plaintiff's Submissions

[16] The plaintiff argues that the second and third defendants engaged in oppressive conduct by taking substantial interest-free loans totalling RM925,101 from the company without proper approval under s. 224 of the Companies Act 2016. These loans represented 95% of the company's operating cash in 2018.

[17] The plaintiff contends that the directors paid themselves exorbitant remuneration that increased from RM30,000 in 2019 to RM180,000 by 2021, consuming over 60% of revenue and leading to the company's first losses in over a decade. This stands in contrast to previous directors, including her late father, who drew no remuneration.

[18] The plaintiff submits that the directors deliberately failed to declare dividends despite historical practice, and refused to hold meetings or provide information, all while knowing she was a beneficial shareholder following her father's death. She argues these actions were deliberately designed to benefit the majority shareholders while depriving minority shareholders of any returns on their investment.

[19] The plaintiff maintains these actions should be viewed holistically as an oppression scheme rather than as separate corporate wrongs, particularly since the majority chose to extract value through methods that only benefited themselves rather than through dividends which would have benefited all shareholders proportionally.

The Defendants' Submissions

[20] The defendants contend that as an exempt private company under s. 224(2)(a) of the Companies Act 2016, the company was not subject to any restrictions regarding loans to directors, and no approval was required. They argue the loans were properly recorded in financial statements and are being repaid.

[21] Regarding remuneration, the defendants maintain their compensation was justified given their work managing the property and dealing with tenants, maintenance, CCM investigations and legal proceedings without staff support. They assert these payments were properly ratified through members' resolutions.

[22] The defendants argue the non-declaration of dividends was a legitimate business decision that affected all shareholders equally and was within directors' discretion, particularly during the COVID-19 pandemic. They note that dividends were eventually declared in 2023.

[23] Fundamentally, the defendants submit that the plaintiff lacks standing to complain about actions before she became a registered shareholder in December 2022, and that her complaints are corporate wrongs that should be pursued *via* derivative action under s. 347 rather than oppression claims under s. 346 since they involve alleged breaches of directors' duties and losses to the company rather than personal targeting of her as a minority shareholder.

Analysis And Findings Of The Court

Whether The Complaints Are Corporate Wrongs Under Section 347 Rather Than Oppressive Conduct Under Section 346 Of The Companies Act 2016

[24] The plaintiff contends that the acts of the second and third defendants in taking substantial loans and paying themselves excessive remuneration, while failing to declare dividends, constitute oppressive conduct specifically targeted at minority shareholders. The plaintiff argues that these actions, viewed holistically against the background of hostility between the parties, demonstrate a conscious effort by the majority to benefit themselves while depriving minority shareholders of any returns on their investment.

[25] The defendants submit that the plaintiff's complaints fundamentally constitute corporate wrongs that should be pursued *via* derivative action under s. 347 rather than through an oppression suit under s. 346 of the Companies Act 2016. They rely heavily on the Federal Court decision in

Low Cheng Teik & Ors v. Low Ean Nee [2024] 5 MLJ 580 to argue that allegations of breach of duties and misappropriation of company funds are properly matters for derivative action.

[26] Having carefully considered the submissions, I find that proper resolution of this issue requires application of the comprehensive legal test formulated by the Federal Court in *Low Cheng Teik* to distinguish between oppression and derivative claims. Nallini Pathmanathan FCJ, delivering the judgment of the Federal Court stated:

> [93] Based on the matters considered above, the following criteria are proposed as the basis for the formulation of a legal test to ascertain whether a shareholder's complaint is actionable under s. 346 of the Act or more properly on behalf of the company under s. 347 of the Act:
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> (i) what is the act or omission that one or more of the shareholders complain of?
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> In short, identify the act, series of acts or omissions;
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> (ii) can the act(s) or omission(s) be characterised as being:
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> (a) oppressive to;
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> (b) in disregard of the interests of;
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> (c) unfairly discriminatory against; or
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> (d) otherwise prejudicial to one or more of the shareholders;
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> (iii) does the cause of action vest in the shareholder or in the company;
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> (iv) who has suffered loss or damage from the wrong done – the shareholder in his capacity as a shareholder, or the company;
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> (v) is the loss suffered by the shareholder as plaintiff separate and distinct to the plaintiff in his capacity as a shareholder, or is it a loss suffered by all the shareholders.

[27] Therefore, the Federal Court established five key criteria:

(i) what is the act or omission complained of?

(ii) can the act be characterised as oppressive to, in disregard of interests of, unfairly discriminatory against, or otherwise prejudicial to one or more shareholders?

(iii) does the cause of action vest in the shareholder or the company?

(iv) who suffered loss or damage – the shareholder in their capacity as shareholder, or the company?

(v) is the loss suffered by the shareholder separate and distinct, or is it suffered by all shareholders?

[28] Applying these criteria to the present case, the evidence reveals a clear pattern of conduct by the second and third defendants that goes beyond mere corporate mismanagement. Upon assuming control of the company in 2018, they immediately withdrew RM619,947 as loans, representing 95% of the company's operating cash. This was followed by additional loans totalling RM305,154 between 2019 and 2021. Simultaneously, they began paying themselves increasing remuneration from RM30,000 in 2019 to RM180,000 in 2021-2023, despite the company's revenue remaining relatively constant at approximately RM317,000 per annum.

[29] The defendants argue, relying on *Low Cheng Teik*, that these acts constitute corporate wrongs as they involve misappropriation of company assets. However, this oversimplifies the Federal Court's analysis. As Nallini Pathmanathan FCJ emphasised at para. 70, "The common element undergirding the four grounds for oppression as set out in s. 346(1) is that the act of oppression should be targeted directly and specifically against one or more of the minority shareholders, resulting in injury to them in their personal capacity."

[30] This conduct must be viewed against the established practice under the previous directors, including the plaintiff's late father, who drew no remuneration and instead declared dividends for all shareholders' benefit. The second and third defendants' conscious decision to extract value through loans and remuneration rather than dividends specifically targeted minority shareholders who could only benefit through dividend declarations.

[31] The case is distinguishable from *Low Cheng Teik* where both parties held equal 50% shareholding and the wrongful assignment of trademarks affected all shareholders equally. Here, the majority shareholder has used its controlling position to benefit itself through mechanisms unavailable to minority shareholders. This aligns more closely with the situation in *Re Gee Hoe Chan Trading Co Pte Ltd* [1991] 3 MLJ 137 (Singapore HC). In this case, the petitioners (owning 41% of shares in a family business) received virtually no return on their investment for five consecutive years while the respondent directors continued drawing substantial salaries, bonuses, and fees from the profitable company. The key issues centred on whether this dividends policy, implemented immediately after petitioners expressed desire to exit the company, constituted oppression of minority shareholders under s. 216 of the Singapore Companies Act. Additional concerns arose regarding representation on the Board of Directors after the petitioners' only director was removed, leaving the minority shareholders with no voice in company management despite their substantial ownership stake ... Chao Hick Tin J found oppression where "for five years ... the respondents had lined their pockets with the profits of the company in the form of either salaries and bonuses ... and/or directors' fees" while the petitioners received nothing.

[32] Critically, the Federal Court in *Low Cheng Teik* recognised at para. 127 that "the reflective loss principle may not come into play where...the loss in value of share capital or the loss of dividends is due to acts or omissions by the majority or by persons in control of the company where such loss is a result of oppression, unfair discrimination or otherwise prejudicial conduct against the shareholder himself to the exclusion of other shareholders." This is precisely the situation here, where the majority shareholders have structured the extraction of company profits in a way that benefits themselves while excluding minority shareholders.

[33] The Federal Court in *Low Cheng Teik* did not overturn established principles of oppression but rather established a framework for distinguishing between genuine oppression and corporate wrongs. Where, as here, the majority's conduct reveals a pattern of self-enrichment that specifically disadvantages minority shareholders, such conduct properly falls within s. 346. The technical ability to frame certain aspects as breaches of directors' duties does not negate the fundamentally oppressive nature of the conduct when viewed as a whole.

[34] This conclusion aligns with para. 97 of *Low Cheng Teik* which requires a minority shareholder to "demonstrate that they have been affected in a distinctive and individual manner which is distinct from the other shareholders by reason of the wrongful conduct." The evidence establishes such distinctive impact through the majority's conscious choice of profit extraction mechanisms that exclude minority participation.

[35] Accordingly, I find that the plaintiff's complaints properly constitute oppression under s. 346 rather than corporate wrongs requiring derivative action under s. 347 of the Companies Act 2016.

The Applicability Of Section 224 Of The Companies Act 2016 To Directors' Loans In Exempt Private Companies

[36] The plaintiff contends that while s. 224(2)(a) of the Companies Act 2016 exempts private companies from the absolute prohibition on directors' loans under s. 224(1), the procedural requirements under ss. 224(3), (4) and (5) regarding approval and repayment timelines continue to apply. These are provided as follows:

> 224. (1) A company shall not –
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> (a) make a loan to a director of the company or of a company which by virtue of section 7 is deemed to be related to that company; or
>
> (b) enter into any guarantee or provide any security in connection with a loan made to such a director by any other person.
>
> (2) Nothing in this section shall apply –

(a) to an exempt private company;

(b) subject to subsection (3), to anything done to provide such director with funds to meet the expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;

(c) subject to subsection (3), to anything done to provide such a director who is engaged in the fulltime employment of the company or its holding company, as the case may be, with funds to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home; or

(d) to any loan made to such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, where the company has passed a resolution to approve a scheme for the making of loans to employees of the company and the loan is in accordance with that scheme.

(3) Paragraph (1)(a) or (b) shall not authorize the making of any loan, or the entering into any guarantee or the provision of any security except with the prior approval of the company on the resolution in which the purpose of the expenditure and the amount of the loan or the extent of the guarantee or security, as the case may be, are disclosed.

(4) If there is no prior approval given under subsection (2), the company may authorize the making of any loan or the entering into any guarantee or the provision of any security –

(a) in the case of a public company, at or before the next following annual general meeting; or

(b) in the case of a private company, within six months from the making of the loan, the entering into any guarantee, or the provision of any security.

(5) If there is no authorization given by company under subsection (3), the loan shall be repaid or the liability under the guarantee or security shall be discharged, as the case may be –

(a) in the case of a public company, after six months from the conclusion of the annual general meeting referred to in paragraph 4(a); or

(b) in the case of a private company, after twelve months from the making of the loan, the entering into any guarantee, or the provision of any security.

(6) Where the approval of the company is not given as required by any such condition, the directors authorizing the making of the loan or the entering into the guarantee or the provision of the security shall be jointly and severally liable to indemnify the company against any loss incurred.

[37] The plaintiff argues that the second and third defendants failed to obtain the requisite approval within six months or repay the loans within 12 months as required by these provisions.

[38] The defendants maintain that as an exempt private company, they are entirely excluded from the operation of s. 224, including all approval and repayment requirements. They rely on *Lee Ah Kong v. Wings Logistic Sdn Bhd & Anor* [2015] 7 MLJ 408 and *Ting Teck Sie v. Wong Sen Chiew & Ors* [2001] MLJU 639 to argue that s. 224(2)(a)'s reference to "this section" means the entirety of s. 224 is inapplicable to exempt private companies.

[39] Upon careful analysis, I find the defendants' reliance on these authorities misplaced. Both cases interpreted s. 133 of the Companies Act 1965, which materially differs from the current s. 224. Section 133(1) of the 1965 Act opened with the express qualification "(other than an exempt private company)" before setting out the prohibition on directors' loans. Section 133(1) of the Companies Act 1965 reads:

> 133. (1) A company (other than an exempt private company) shall not make a loan to a director of the company or of a company which by virtue of section 6 is deemed to be related to that company, or enter into any guarantee or provide any security in connection with a loan made to such a director by any other person but nothing in this section shall apply –
>
> (a) subject to subsection (2), to anything done to provide such a director with funds to meet expenditure incurred or to be incurred by him for the purposes of the company or for the purpose of enabling him properly to perform his duties as an officer of the company;
>
> (b) to anything done to provide such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, with funds to meet expenditure incurred or to be incurred by him in purchasing or otherwise acquiring a home; or
>
> (c) to any loan made to such a director who is engaged in the full-time employment of the company or its holding company, as the case may be, where the company has at a general meeting approved of a scheme for the making of loans to employees of the company and the loan is in accordance with that scheme.

[40] The provision's structure made clear that exempt private companies were entirely outside its scope.

[41] In contrast, s. 224 of the Companies Act 2016 adopts a different legislative scheme. The primary prohibition in s. 224(1) is followed by separate subsections dealing with exceptions (224(2)), approval requirements (224(3)-(4)), and repayment obligations (224(5)). While s. 224(2)(a) states that "Nothing in this section shall apply to an exempt private company," this must be read in context.

[42] In *Lee Ah Kong*, S Nantha Balan J (now JCA) found that s. 133 did not apply because "at the time when the loan was given the company was an exempt company." However, this reasoning was specifically tied to s. 133's opening words that excluded exempt private companies from its

entire operation. Similarly in *Ting Teck Sie*, the High Court's finding that "Section 133 of the Act which provides certain restrictions where loans to directors are concerned, do not seem to cover an exempt private company" was based on the same structural feature.

[43] The 2016 Act deliberately adopts a different approach. Section 224(4)(b) specifically contemplates private companies making loans to directors and provides a six-month window for obtaining approval. If exempt private companies were entirely outside s. 224's scope, as the defendants contend, this provision would be redundant. The Legislature would not have needed to specify different approval timelines for public versus private companies.

[44] This is reinforced by s. 224(5)(b) which establishes a 12-month repayment requirement for private companies where approval is not obtained. These detailed governance requirements for private companies, which did not exist in the 1965 Act, demonstrate Parliament's intent that exempt private companies, while relieved from the absolute prohibition on loans, remain subject to approval and repayment requirements.

[45] The evidence shows the second and third defendants took substantial loans totalling RM925,101 between 2018 and 2021 without any contemporaneous approval. Their attempt to ratify these loans through a directors' resolution dated 6 December 2021 came approximately three years after the initial loans, well outside the six-month approval window required by s. 224(4)(b). Moreover, despite the 12-month repayment requirement under s. 224(5)(b), these loans remained substantially unpaid until the Companies Commission of Malaysia commenced investigations in May 2023.

[46] The interpretation advanced by the defendants would effectively render nugatory the specific governance requirements Parliament introduced in the 2016 Act. It would create an unintended *lacuna* where directors of exempt private companies could make unlimited loans to themselves without any procedural safeguards, despite Parliament having deliberately included such safeguards in ss. 224(4) and (5).

[47] Section 133A of the 1965 Act, which dealt with loans to persons connected with directors, further illustrates the changed legislative intent. Section 133A(1) reads:

> 133A. (1) Subject to the provisions of this section, a company (other than an exempt private company) shall not –
>
> (a) make a loan to any person connected with a director of the company or of its holding company; or
>
> (b) enter into any guarantee or provide any security in connection with a loan made to such person by any other person.

[48] It contained a blanket exemption for exempt private companies similar to s. 133. The 2016 Act's departure from this approach in favour of more nuanced regulation cannot be ignored.

[49] Accordingly, I find that while the company's exempt private company status relieved it from the absolute prohibition on directors' loans under s. 224(1), the second and third defendants remained bound by the approval and repayment requirements in s. 224(4) and (5), which they failed to satisfy.

The Justification And Propriety Of Directors' Remuneration

[50] The plaintiff contends that the directors' remuneration was excessive and unjustified for a company that merely collected rental income from a single property, highlighting that previous directors including her late father drew no remuneration. She argues that the dramatic increase in remuneration from RM30,000 in 2019 to RM180,000 by 2021, consuming over 60% of the company's revenue, was oppressive to minority shareholders and led to the company's first losses in over a decade.

[51] The defendants maintain that their remuneration was justified by their extensive responsibilities managing the company without staff support, dealing with tenant issues, property maintenance, CCM investigations, and legal proceedings. They further argue that these payments were properly ratified through members' resolutions dated 7 July 2023 and 8 October 2024.

[52] Having examined the evidence, I find the defendants' position regarding their remuneration untenable. The company's financial statements reveal that its revenue remained relatively constant, ranging from RM330,000 in 2019 to RM317,000 in 2023. Yet during this period, the directors' remuneration increased six fold from RM30,000 to RM180,000, with additional statutory contributions rising from RM650 to RM22,200. This dramatic escalation in remuneration cannot be justified by the nature of the company's business or the directors' responsibilities.

[53] The legal principles governing such situations were authoritatively restated in *Wong See Yaw & Anor v. Bright Packaging Industry Bhd* [2016] 6 CLJ 465, where Mohd Nazlan Ghazali JC emphasised that "it is a well-established common law rule in company law which is elementary and uncomplicated" that directors have no authority to pay themselves unless authorised by the company's constitution or approved by members. His Lordship cited the foundational principle from the English Court of Appeal case of *Hutton v. West Cork Railway Co* [1883] 23 Ch D 654 that it "is not implied from the mere fact that he is a director that he is to have right to be paid for it."

[54] The case of *Re Gee Hoe Chan Trading* is particularly instructive on the application of these principles in circumstances similar to the present case. There, Chao Hick Tin J found oppression where "for five years from 1984 to 1988 (and many years before that) the respondents had lined their pockets

with the profits of the company in the form of either salaries and bonuses ... and/or directors' fees" while the company showed credit balances but paid no dividends. The court found it particularly significant that only one minority petitioner received any benefit through directors' fees. Similarly here, the second and third defendants have appropriated an increasingly disproportionate share of the company's revenue as remuneration while declaring no dividends until 2023.

[55] The defendants' attempt to justify their remuneration by reference to tenant issues and property maintenance is undermined both by the company's historical operation and the legal principles established in *Wong See Yaw*. The court there specifically rejected arguments about increased responsibilities, holding that "the starting position in law must always be the common law rule ... that directors have no right to be remunerated unless approved by shareholders ... or provided for in the articles." Prior to the second and third defendants assuming control, the company was successfully managed by previous directors who drew no remuneration. The company's business model – collecting rental from a single property – has not fundamentally changed. The additional responsibilities cited by the defendants, such as dealing with CCM investigations and legal proceedings, are largely consequences of their own conduct in taking substantial unauthorised loans and excessive remuneration.

[56] The purported ratification through members' resolutions in 2023 and 2024 cannot cure the underlying impropriety of these payments. *Wong See Yaw* specifically addressed this issue, holding that "it is imperative, as well as it is logical and commonsensical that the directors cannot be vested with the authority to decide on matters pertaining to their own remuneration." Article 87 of the company's articles of association requires remuneration to be determined by the company in general meeting. In full, it reads:

> 87. The remuneration of the Directors shall from time to time be determined by the Company in General Meeting, and such remuneration shall be divided amongst the Directors as they shall determine, or failing agreement, equally* The Directors shall also be paid such travelling, hotel and other expenses as may reasonably be incurred by them in the execution of their duties including any such expenses incurred in connection with their attendance at Meetings of Directors, if by arrangement with the other Directors any Director shall perform or render any special duties or services outside his ordinary duties as a Director, the Directors may pay him special remuneration, in addition to his ordinary remuneration, and such special remuneration may be by way of salary, commission, participation in profits or otherwise as may be arranged.

[57] However, no such determination was made before these payments were taken.

[58] Moreover, the timing and circumstances of the ratification resolutions suggest they were reactive measures rather than proper corporate governance. The resolution dated 7 July 2023 attempting to approve 2022 remuneration came after the fact, while the resolution dated 8 October 2024 sought to retroactively approve remuneration from 2019-2021. Such *post-facto* ratification, particularly where the benefiting directors control the majority votes, cannot legitimise what was essentially an improper appropriation of company funds.

[59] The combined effect of these excessive remunerations mirrors precisely what Chao Hick Tin J in *Gee Hoe Chan* identified as oppressive behaviour – where directors "had acted in the affairs of the company in their own interest rather than in the interest of the members as a whole." Their actions converted a consistently profitable company into one recording losses, directly impacting minority shareholders who could only benefit through dividends declarations. This aligns squarely with *Gee Hoe Chan*'s finding that oppression exists where the majority shareholders "make use of their controlling power in both the general meeting and the board to adopt a policy which only benefitted themselves and gave hardly any benefit to the minority shareholders."

[60] Accordingly, following *Wong See Yaw*'s clear restatement of the law on directors' remuneration and applying the oppression principles from *Gee Hoe Chan*, I find the level and manner of remuneration taken by the second and third defendants were oppressive to minority shareholders and cannot be justified by their claimed responsibilities or subsequent attempted ratification.

The Propriety Of Dividend Declarations And The Plaintiff's Standing To Challenge Dividend Policy

[61] The plaintiff argues that as a beneficial shareholder following her father's death on 19 October 2017, she has standing to challenge the non-declaration of dividends from 2017-2020. She contends that had dividends been declared during this period, they would have flowed to her through the estate's executors. The plaintiff further argues that the 2023 dividends' declaration was improper as it was made while the company was operating at a loss, and was primarily used to facilitate the second defendant's loan repayment.

[62] The defendants maintain that the plaintiff lacks standing to complain about non-declaration of dividends prior to becoming a registered shareholder in December 2022. They further contend that the 2023 dividends' declaration was proper despite operating losses because the company had substantial retained profits exceeding RM1.1 million.

[63] The defendants' position regarding the plaintiff's standing misapprehends the nature of beneficial ownership following testamentary succession. Upon the death of the plaintiff's father on 19 October 2017, his rights as a shareholder, including the right to receive dividends, passed to his estate. The plaintiff's entitlement to 25% of her father's shareholding crystallised at that point pursuant to his will. Any dividends declared during the period between her father's death and her registration as a shareholder would have flowed to her through the estate's executors.

[64] This analysis is supported by art. 63(1)(b) of the Company's articles of association, which explicitly recognises the rights of "every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting." In full, art. 63 reads:

> 63. (1) Notice of every General Meeting shall be given in any manner authorised by these Articles to:
>
> (a) every member holding shares conferring the right to attend and vote at the meeting who at the time of the convening of the meeting, shall have paid all calls or other sums presently payable by him in respect of shares in the Company, and
>
> (b) every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting; and
>
> (c) the Auditors of the Company.

[65] This provision acknowledges the substantive rights of beneficial owners following testamentary succession, even before formal registration.

[66] The evidence reveals a stark contrast in dividend policy before and after the second and third defendants assumed control. Prior to 2017, the company regularly declared dividends, including RM200,000 in 2014, RM500,000 in 2015, and RM200,000 in 2016. This practice ceased entirely after the second and third defendants took control, coinciding with their extraction of substantial loans and remuneration.

[67] The impropriety of the 2023 dividends' declaration is particularly telling. As held in *Re Gee Hoe Chan* by Chao Hick Tin J, it was "grossly inequitable that the majority shareholders should make use of their controlling power in both the general meeting and the board to adopt a policy which only benefitted themselves." Here, the second and third defendants declared RM50,000 dividends while the company was operating at a loss, primarily to facilitate the second defendant's repayment of unauthorised loans through his RM37,500 dividends entitlement.

[68] The defendants' argument regarding retained profits of RM1.1 million is misleading. As revealed in the company's financial statements, a substantial portion of these retained profits consists of receivables, including the RM925,101 in unauthorised loans to directors. The declaration of dividends against such illusory retained profits, particularly while the company is recording operating losses, is improper and potentially subjects minority shareholders to liability for wrongly paid dividends under s. 133 of the Companies Act 2016.

[69] Accordingly, I find that the plaintiff has standing to challenge the company's dividends policy from 2017 onwards, and that the pattern of non-declaration followed by an improper declaration in 2023 constitutes part of the overall pattern of oppressive conduct by the majority shareholders.

The Obligation To Hold Meetings And Provide Information To Shareholders

[70] The plaintiff contends that despite the abolition of mandatory AGM requirements, the second and third defendants had a continuing fiduciary duty to convene meetings to inform shareholders of the company's deteriorating financial position. She argues that as a beneficial shareholder following her father's death, she was entitled to receive notice of meetings under s. 321(2) of the Companies Act 2016 and art. 63(1)(b) of the company's articles of association.

[71] The defendants maintain there was no obligation to hold meetings under the Companies Act 2016 following the abolition of mandatory AGM requirements. They further argue that the plaintiff could have exercised her right under s. 310 to request meetings as a 12.5% shareholder but failed to do so. Section 310 reads:

> 310. A meeting of members may be convened by –
>
> a) the Board; or
>
> (b) any member holding at least ten per centum of the issued share capital of a company or a lower percentage as specified in the constitution or if the company has no share capital, by at least five per centum in the number of the members.

[72] The abolition of mandatory AGM requirements under the Companies Act 2016 does not absolve directors of their fundamental duties to keep shareholders informed of material developments in the company's affairs. This is particularly true where, as here, the company's financial position deteriorated significantly under the directors' management, shifting from consistent profits to sustained losses. The evidence shows the company's profitability declined from RM212,170 in 2019 to a loss of RM62,806 in 2023, primarily due to the directors' remuneration increasing from RM30,000 to RM180,000 during this period.

[73] The defendants' response to the plaintiff's queries about the company's financial position, as evidenced in their letter exhibited at encl. 5, p. 77, is particularly telling. Their assertion that shareholders have "no right under the Companies Act to inspect our clients' management accounts and all the financial and accounting records" demonstrates a fundamental misunderstanding of directors' duties to shareholders and reinforces the oppressive nature of their conduct.

[74] The defendants' argument that the plaintiff could have requested meetings under s. 310 ignores the information asymmetry between directors and shareholders. Without access to financial information, the plaintiff had no basis to know when meetings might be necessary. Moreover, the evidence shows that when the plaintiff did raise queries about unauthorised loans and excessive remuneration through her solicitors' letters dated 25 May 2023 and 5 April 2024, these were met with dismissive responses that failed to address the substance of her concerns.

[75] The defendants' conduct must also be viewed in light of art. 63(1)(b) of the company's articles of association, which explicitly requires notice of meetings to be given to "every person entitled to a share in consequence of the death or bankruptcy of a member who, but for his death or bankruptcy, would be entitled to receive notice of the meeting." This provision, read together with s. 321(2) of the Companies Act 2016, clearly entitled the plaintiff to receive notice of meetings as a beneficial shareholder following her father's death.

[76] The only meetings for which notices were eventually provided were those seeking to ratify the directors' own remuneration, further demonstrating that the selective convening of meetings served the directors' interests rather than proper corporate governance. This pattern of behaviour aligns with the oppressive conduct identified in *Re Gee Hoe Chan*, where Chao Hick Tin J found that the majority's control of both board and general meetings was used to adopt policies benefiting only themselves.

[77] Accordingly, I find that the directors' failure to convene meetings or provide information about material changes in the company's financial position, particularly when viewed alongside their dismissive responses to legitimate shareholder inquiries, forms part of the overall pattern of oppressive conduct.

Conclusion

[78] Having carefully considered all the evidence and submissions, I find that the second and third defendants have conducted the affairs of the company in a manner oppressive to the plaintiff as a minority shareholder. The systematic extraction of value through unauthorised loans and excessive remuneration, coupled with the deliberate withholding of dividends and

information, demonstrates a clear pattern of conduct designed to benefit the majority at the minority's expense. This conduct falls squarely within s. 346 of the Companies Act 2016 as it represents a visible departure from the standards of fair dealing that shareholders are entitled to expect.

[79] The originating summons is allowed on the following terms:

(i) a declaration that the second and third defendants have managed and/or conducted the affairs of the company (first defendant) and/or exercised their powers oppressively and/or disregarded and/or acted in a manner unfair and prejudicial to the interests of the plaintiff as a shareholder of the company;

(ii) a declaration that all loans by the company to the second defendant and/or third defendant are unlawful;

(iii) a declaration that the payment of directors' remuneration and statutory contributions to the second defendant and/or third defendant in 2019, 2020, 2021, 2022 (and 2023, if any) are unlawful;

(iv) an order that a forensic auditor appointed as agreed between the parties at the cost and expense of the second and/or third defendant to investigate the operations and accounts of the company and to provide a report to this court;

(v) an order that the company secretary of the company do disclose to the plaintiff the audited accounts for financial year ending 2023 and all circulars, resolutions and/or other company documents from October 2017 to date;

(vi) an order that the second defendant and/or third defendant pay to the company all monies wrongfully and/or unlawfully appropriated and/or received from the company as determined by this court;

(vii) an order that an independent property valuer be appointed as agreed between the parties to revalue the property(ies) of the company at the current market price for purpose of valuing the shares of the plaintiff;

(viii) an order that an independent accountant be appointed as agreed between the parties to value the shares of the company as at the date of the order taking into account the property valuation at para. 7 above;

(ix) an order that the independent accountant shall have unhindered access to all the books, records and financial information of the company wherever such may be kept and in whatever form and with whomsoever, including the accountant of the company, at any time and from time to time throughout the valuation period;

(x) an order that the independent accountant shall complete the valuation exercise taking into account declarations made by this court in paras. 1, 2 and 3 above and submit a valuation report to this court and the parties' solicitors within three months from the date of this order;

(xi) an order that the valuation report shall contain reasons for valuation on the fair value of the plaintiff's shares;

(xii) an order that the costs of the forensic auditor, independent property valuer and independent accountant shall be borne by second defendant and/or third defendant jointly and severally;

(xiii) an order that the second defendant be ordered to purchase and make full payment of the purchase price of the plaintiff's shares in the company at such price as determined by the independent accountant within 14 days of such determination;

(xiv) upon receipt of the full payment for the said share from the second defendant at para. (m) above, the plaintiff shall execute all the necessary transfer documents to transfer the said share to the second defendant;

(xv) in the event the second defendant fails, refuses and/or neglects to comply with para. (m) above:

(a) an order that the company be wound up by the court under the provisions of the Companies Act 2016; and

(b) an order that the official receiver be and is hereby appointed as the provisional liquidator of the company.

(xvi) costs of RM30,000 be paid by the second defendant and/or third defendant to the plaintiff jointly and severally subject to the allocator fee; and

(xvii) an order that the parties be given liberty to apply to the court for consequential orders.